

Regulation 1668. Resale Certificates.

(a) Effect of Certificate.

(1) The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes a certificate from the purchaser that the property is purchased for resale. If timely taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit, the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser.

(2) If a purchaser who gives a resale certificate for property makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The use tax must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. The purchaser cannot retroactively rescind or revoke the resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

(b) Form of Certificate.

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser or an agent or employee of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser, or if the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, an appropriate notation to that effect in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale". The use of phrases such as "nontaxable", "exempt", or similar terminology is not acceptable.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)

(2) A document containing the essential elements described in (1) above is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the following form:

### California Resale Certificate

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(Name of Purchaser)

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(Address of Purchaser)

I HEREBY CERTIFY: That I hold valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law; That I am engaged in the business of selling \_\_\_\_\_;  
that the tangible personal property described herein which I shall purchase from: \_\_\_\_\_

will be resold by me in the form of tangible personal property; provided, however, that in the event any of such property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property or other authorized amount.

Description of property to be purchased: \_\_\_\_\_

**Warning:** Revenue and Taxation Code section 6094.5 provides that any person who gives a resale certificate for property which the person knows at the time of purchase is not to be resold prior to any storage or use, other than retention, demonstration, or display while holding it for sale in the regular course of business, may be guilty of a misdemeanor. Additionally, the purchaser is liable for the amount of tax that would be due if the purchaser had not given such resale certificate and a penalty of 10 percent of the tax or \$500, whichever is greater, will apply for each purchase made for personal gain or to evade the payment of taxes.

Date: \_\_\_\_\_ 19 20 \_\_\_\_\_

\_\_\_\_\_  
(Signature of Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

Under "Description of property to be purchased" there may appear:

(A) Either an itemized list of the particular property to be purchased for resale, or

(B) A general description of the kind of property to be purchased for resale. (A certificate, thus describing the property is good until revoked in writing.)

If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number.

If the purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as it appears below should be used, rather than the general resale certificate shown above:

California Resale Certificate  
Specific for Auto Body Repair and Paint Shops

\_\_\_\_\_  
(Name of Purchaser)

\_\_\_\_\_  
(Address of Purchaser)

I HEREBY CERTIFY: That I hold valid seller's permit No. \_\_\_\_\_ issued pursuant to the Sales and Use Tax Law; that I am engaged in the business of selling \_\_\_\_\_, that the tangible personal property described herein which I shall purchase from \_\_\_\_\_ will be resold by me in the form of tangible personal property; provided, however, that in the event any of such property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property or other authorized amount.

I will be reselling the items *initialed* below (Please *initial* the items to be purchased for resale in the space provided):

_____ <u>Automobile parts</u>	_____ <u>Fisheye eliminator</u>	_____ <u>Polishes/Wax</u>	_____ <u>Sealers</u>
_____ <u>Clear Coats</u>	_____ <u>Glues / Adhesives</u>	_____ <u>Primers</u>	
_____ <u>Electrical Tape</u>	_____ <u>Hardeners</u>	_____ <u>Putties</u>	
_____ <u>Fillers</u>	_____ <u>Paints</u>	_____ <u>Rust Protectors</u>	
_____ <u>Other (specify items)</u>	_____		

**Note:** The following items are consumed by auto body repair and paint shops and generally are not purchased for resale. If the purchaser does in fact resell any of the following items prior to use, the purchaser can recover the tax reimbursement paid to the seller by taking a tax-paid purchases resold deduction on line 10(b) of the purchaser's sales and use tax return. If an item is purchased exclusively for resale, the item may be specifically listed above under the caption "Other."

<u>Abrasives</u>	<u>Equipment Repair Parts</u>	<u>Masks</u>	<u>Reducers</u>
<u>Books</u>	<u>Goggles</u>	<u>Metal conditioners</u>	<u>Respirators</u>
<u>Cans</u>	<u>Hand Cleaners</u>	<u>Paint Remover</u>	<u>Rubbing Compounds</u>
<u>Cleaning Solvent</u>	<u>Manuals</u>	<u>Plastic Bottles</u>	<u>Rubbing Machine</u>
<u>Color Charts</u>	<u>Masking Paper</u>	<u>Polishing Compounds</u>	<u>Thinners</u>
<u>Equipment</u>	<u>Masking Tape</u>	<u>Polishing Machine</u>	<u>Touch-Up Bottles</u>

**Warning:** Revenue and Taxation Code section 6094.5 provides that any person who gives a resale certificate for property which the person knows at the time of purchase is not to be resold prior to any storage or use, other than retention, demonstration or display while holding it for sale in the regular course of business, may be guilty of a misdemeanor. Additionally, the purchaser is liable for the amount of tax that would be due if the purchaser had not given such resale certificate and a penalty of 10 percent of the tax or \$500, whichever is greater, will apply for each purchase made for personal gain or to evade the payment of taxes.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of the Purchaser or Authorized Agent)

\_\_\_\_\_  
(Title)

(3) If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subsection (b)(4) below.

(4) If a purchaser wishes to designate on each purchase order that the property is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or whether tax applies to the order. If each purchase order does not so specify, it will be assumed that the property covered by that purchase order was purchased for use, and not for resale. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for produced parts for resale and also for tooling used to produce the parts should specify that the parts are purchased for resale and that the sale of the tooling is subject to tax.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

(c) Other Evidence to Rebut Presumption of Taxability. A sale for resale is not subject to sales tax. However, a resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate, the seller will be relieved of liability for the tax only if the seller presents satisfactory evidence that the specific property sold:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Has been used or consumed by the purchaser and the purchaser has paid the use tax directly to this State.

(d) Good Faith. A seller will be presumed to have taken a resale certificate in good faith in the absence of evidence to the contrary. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

(e) Mobilehomes. A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

(f) Mobile Transportation Equipment. Any person, not exempt from use tax pursuant to Section 6352 of the Revenue and Taxation Code, who leases mobile transportation equipment and who is the consumer thereof, may issue a resale certificate to the equipment vendor for the limited purpose of reporting use tax on the fair rental value of the mobile transportation equipment.

(g) Improper Use of Certificate. Except when a resale certificate is issued in accordance with the terms of subdivisions (e) or (f):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor if the purchaser gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold. Such improper use of a certificate also may cause the purchaser to become liable for penalties called for by Sections 6072, 6094.5, 6484, or 6485.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate.

Authority: Section 7051, Revenue and Taxation Code.

References: Sections 6012.8, 6012.9, 6072, 6091-6095, 6241-6245, Revenue and Taxation Code.